

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

FEB - 9 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In Matter of )

COMSAT Corporation )

Petition for Partial Waiver )

of the Universal Service Contribution )

Requirement Contained in Section )

54.703 of the Commission's Rules, )

47 C.F.R. § 54.703 (1997) )

CC Docket No. 96-45

COMMENTS OF GATEWAYUSA® HOLDING COMPANY INC.,  
COSMOS TELECOM MARKETING, INC. AND SITEL, INC.

GatewayUSA® Holding Company Inc., Cosmos Telecom Marketing, Inc. and Sitel, Inc. ("Gateway Affiliates"), by their attorney and pursuant to the Federal Communications Commission's ("Commission's") January 30, 1998 Public Notice<sup>1</sup>, hereby submit the following comments with respect to COMSAT Corporation's ("COMSAT's") Petition for Partial Waiver ("Petition") filed on January 9, 1998.

I. OVERVIEW

The Gateway Affiliates support COMSAT's request insofar as it would require an international service provider with *de minimis* domestic revenues to contribute to Universal Service based only on its domestic revenues. The Commission should extend any relief afforded COMSAT in the instant matter to similarly situated carriers such as callback operators like the Gateway Affiliates. As demonstrated below, absent some form of relief, the implementation of Section 54.703 of the Commission's Rules will competitively disadvantage U.S. callback

<sup>1</sup> COMSAT Corporation Petition for Partial Waiver, CC Dkt. No. 96-45, DA 98-185, Public Notice (January 30, 1998).

025

operators *vis-a-vis* foreign competitors which only carry international traffic and thus are not subject to Universal Service assessments. Such a consequence violates Section 254(d) of the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. §254(d)(1996), flatly contradicts the Commission's own principle of competitive neutrality and impairs the effectiveness of international callback in exerting downward pressure on foreign collection rates.

The Gateway Affiliates, commonly owned by Gateway Worldwide Communications, Inc., each provide authorized international callback services.<sup>2</sup> Although these companies--like COMSAT--carry incidental and limited domestic traffic, a substantial majority of their traffic is international or foreign in nature. Because of this, under Section 54.703 of the Commission's Rules, 47 C.F.R. § 54.703 (1997), the Gateway Affiliates are required to contribute to the Universal Service fund based on both their limited interstate and comparatively greater international revenues.

## II. DISCUSSION

In its Universal Service Report and Order, the Commission explicitly recognizes that by extending Universal Service assessments to international revenues "some providers of international services will be treated differently from others" and that it ideally would prefer a "more competitively neutral outcome".<sup>3</sup> Further, the Commission has indicated that "[s]hould we become aware of any significant competitive concerns in the future, however, we will revisit

---

<sup>2</sup> See Overseas Common Carrier Section 214 Applications Taken, Public Notice, ITC-97-258 (June 27, 1997); Overseas Common Carrier Section 214 Applications Taken, Public Notice, ITC-95-335 (July 12, 1995); and Overseas Common Carrier Section 214 Applications Taken, Public Notice, ITC-93-315 (Nov. 3, 1993).

<sup>3</sup> In Re Federal-State Joint Board on Universal Service, Report and Order in CC Dkt. No. 96-45, ¶ 779 (May 8, 1997)(appeal pending)("Report and Order").

this issue."<sup>4</sup> In view of the impact the Commission's Universal Service policies will have on certain U.S. callback operators and the international marketplace in general, it is now time to re-examine this issue.

The Commission's decision to include international revenues for purposes of calculating a carrier's universal service contribution clearly violates Section 254(d) of the 1996 Act, 47 U.S.C. §254(d) (1996), insofar as it requires contributions to be on an "equitable and nondiscriminatory basis." Even though the Gateway Affiliates provide *de minimis* and ancillary domestic services, they are required to base their universal service contributions on both domestic and international revenues. By contrast, their primary competitors, companies which provide foreign-only services, are exempt from universal service assessments altogether, affording such companies a significant competitive advantage. In fact, former Commissioner Chong in her Separate Statement to the Universal Service Report and Order, acknowledges this problem:

I believe that it is inequitable to include international revenues for purposes of calculating a carrier's universal service contribution because it will place any carrier with both interstate and international revenues at an economic disadvantage against other carriers that provide only international service. Once the recently-adopted World Trade Organization Agreement becomes effective, when presumably foreign carriers will compete directly with U.S. companies for the international business of U.S. customers, this disparity will place U.S. carriers at a very real competitive disadvantage.<sup>5</sup>

Clearly, contributions are not made on an "equitable and nondiscriminatory basis" in accordance with Section 254(d) when they apply to U.S.-based callback operators yet do not apply to their

---

<sup>4</sup> Id.

<sup>5</sup> Id. at Separate Statement of Commissioner Rachelle B. Chong, Concurring in Part, Dissenting in Part, at 3.

foreign competitors.

Because of the competitive disadvantage under which U.S. callback operators such as the Gateway Affiliates would be forced to operate, the inclusion of international revenues in universal service calculations also blatantly violates the Commission's own policy of competitive neutrality. In its Report and Order, the principle of competitive neutrality was established as one of six principles upon which the Commission's universal service program would be based.<sup>6</sup> According to the Commission, "competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another...."<sup>7</sup> Yet, by requiring callback operators which have *de minimis* domestic revenues to base their universal service assessments on both domestic and international revenues while foreign competitors which do not provide any U.S. domestic service are altogether exempt from the assessments, Section 54.703 is anything but competitively neutral. The provision ironically has the effect of favoring companies which have no domestic U.S. traffic at the expense of those companies which do, even if the level is *de minimis*.<sup>8</sup>

---

<sup>6</sup> Report and Order at ¶¶43-48.

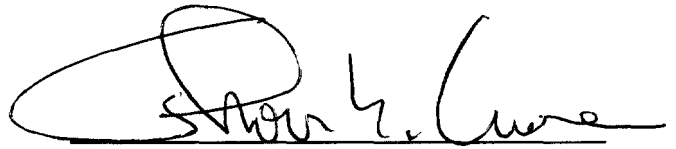
<sup>7</sup> Id. at ¶47. According to the Commission, "competitive neutrality is consistent with the requirement that universal service contributions be equitable and nondiscriminatory. Id. at ¶48.

<sup>8</sup> The Commission's decision to include international revenues for purposes of calculating a carrier's universal service contribution also serves to undermine the downward pressure on foreign collection rates that originally prompted the Commission to authorize callback services in the first place. According to the Commission, callback services promote the public interest by providing "increased competition in foreign markets which places significant downward pressure on foreign collection rates, to the ultimate benefit of U.S. consumers and industry whether located within the U.S. or abroad." In Re VIA USA, Ltd. TELEGROUP, INC. Applications for Authority Under Section 214 of the Communications Act of 1934, as amended, to operate as International Resale Carriers; DISCOUNT CALL INTERNATIONAL CO. Application for Authority under Section 214 of the Communications Act of 1934, as amended, Order on Reconsideration, FCC 95-224, 78 Rad. Reg. 2d (P & F) 810, ¶ 28 (June 15, 1995).

### III. CONCLUSION

For the reasons stated above, the Commission should extend limited relief such that international service providers with *de minimis* domestic revenues are only required to contribute to Universal Service based their domestic revenues. Such limited relief should extend to all similarly situated carriers such as the Gateway Affiliates, not just COMSAT itself.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas K. Crowe", written over a horizontal line.

Thomas K. Crowe  
LAW OFFICES OF THOMAS K. CROWE,  
P.C.  
2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037  
(202) 973-2890

COUNSEL FOR GATEWAYUSA®  
HOLDING COMPANY INC.,  
COSMOS TELECOM MARKETING, INC.,  
AND SITEL, INC.

Dated: February 9, 1998